1768600

WOODWARD, COTHRAN & HERNDON

Attorneys at Law
1200 MAIN STREET, SUITE 600
POST OFFICE BOX 12399
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE (803) 799-9772 FACSIMILE (803) 799-3256

EDWARD M. WOODWARD, JR.
DARRA W. COTHRAN
WARREN R. HERNDON, JR.

EDWARD M. WOODWARD, SR.
(1921-2000)

November, 2005

The Honorable Charles L. A. Terreni
Executive Director
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, SC 29211

Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration with Horry Telephone Company, under the Telecommunications Act of 1996
Case No. 2005-188-C
Our File No. 05-7024

Dear Mr. Terreni:

Enclosed for filing are an original and sixteen copies of the Post-Hearing Brief of MCIl. Would you please file the original, returning a clocked copy to me in the envelope provided.

By copy of this letter I am all parties of record, by mail and electronically. Thank you for your assistance.

Very truly yours,

WOODWARD, COTHRAN & HERNDON

Edward M. Woodward, Jr.
emwoodward@wchlaw.com

EMWjr/bjd

Enclosures.

cc: Joseph Melchers, Esquire
Margaret M. Fox, Esquire
John M. Bowen, Jr., Esquire
Florence P. Belser, Esquire
Shannon Bowyer Hudson, Esquire
Frank R. Ellerbe, III, Esquire

BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION

In Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Horry Telephone Cooperative, Inc., Concerning Interconnection and Resale under the Telecommunications Act of 1996	)	Docket No. 2005-188-C

POST-HEARING BRIEF OF MCI

MCImetro Access Transmission Services LLC ("MCI") submits its post-hearing brief following hearing of its Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Act") and other law, of certain terms and conditions of a proposed interconnection agreement between MCI and Horry Telephone Cooperative, Inc. ("Horry"). For the reasons stated, the South Carolina Public Service Commission ("Commission") should approve the terms and conditions proposed by MCI for its interconnection agreement with Horry.

SUMMARY OF MCI's POSITIONS

1. Horry has a duty to interconnect with MCI pursuant to section 251(a) of the Act and a corresponding duty to exchange traffic with MCI under section 251(b) of the Act, regardless of whether the traffic to be terminated by Horry originates with MCI's retail customers or with the end users of MCI's wholesale customers.

2. Internet Service Provider ("ISP)-bound traffic using "virtual" NXX codes should be treated the same as other ISP-bound traffic for the purposes of establishing reciprocal compensation arrangements under federal law.

3. MCI is entitled to compensation of $0.0007 per minute for ISP-bound traffic.

4. The exchange of Jurisdictional Indicator Parameter ("JIP") should not be required.

INTRODUCTION

MCI is seeking to provide switch-based service in Horry's territory in South Carolina. MCI has teamed with Time Warner Cable Information Services, Inc. ("TWCIS") so that TWCIS' cable customers can make telephone calls using their cable lines rather than their telephone lines. TWCIS plans to hand off telephone calls originated on its network to MCI, which in turn will provide wholesale switching and related services, including call transport, number portability, directory assistance, operator service and E911. TWCIS' customers' calls would originate as Voice over Internet Protocol ("VoIP"), but then be converted by TWCIS to the standard time division multiplex ("TDM") format before being sent to MCI for switching. MCI needs to enter into an interconnection agreement with Horry so it can exchange traffic with Horry and port numbers of former Horry customers who choose TWCIS' retail telephone service and wish to retain their telephone numbers.

MCI also seeks to provide service to ISPs who would serve dial-up internet customers in Horry's territory. Calls would be routed through an interconnection point

between Horry and MCI, over MCI's transport facilities to an MCI switch, and then to the ISP's modem banks. ISPs would receive virtual NXX codes from MCI, which would enable them to provide customers a local number to dial for their Internet service. Intercarrier compensation between MCI and Horry would be provided in accordance with rules the FCC has established for ISP-bound traffic.

Horry has attempted in this case to block MCI from providing these competitive services in its territory, thus preventing its customers from having a meaningful choice of service provider. T. 26, 29-30, 50, 61-62, 78, 81, 83, 111. At the same time, Horry will not commit to directly interconnect with TWCIS. T. 245-46. This is hardly surprising, since Spirit Telecom, which is owned by Horry and other incumbent local exchange carriers ("ILECs") in South Carolina, provides competing services which, like TWCIS' services, use the Internet Protocol ("IP").[1] T. 67, 81, 84. See MCI Hearing Exhibits 2 &

---

[1] There is no question that TWCIS and the affiliates and other companies related with Horry generate traffic using the IP protocol. See T.31. There also is no question that the FCC has jurisdiction over VoIP. During 2004, the FCC issued three major orders on the classification of IP-enabled services. In the first case, the FCC ruled that Pulver.com's Free World Dialup service, which is a computer-to-computer service, is an "unregulated interstate information service." *In the Matter of Petition for Declaratory Ruling that Pulver.Com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, FCC 04-27, 2004 WL 315259 (F.C.C.), 19 F.C.C.R. 3307, 19 FCC Rcd. 3307, 31 Communications Reg. (P&F) 1341 (rel. February 19, 2004). Next, the FCC denied AT&T's request for a declaratory ruling that access charges do not apply to its "phone-to-phone" IP telephony service, which employs VoIP transport to connect two users on the circuit-switched PSTN. *In The Matter Of Petition For Declaratory Ruling That AT&T's Phone-To-Phone IP Telephony Services Are Exempt From Access Charges*, WC Docket No. 02-361, Order, FCC 04-97, 2004 WL 856557 (F.C.C.), 19 F.C.C.R. 7457, 19 FCC Rcd. 7457, 32 Communications Reg. (P&F) 340 (rel. April 21, 2004). Subsequently, the FCC preempted the Minnesota Public Utilities Commission and other state commissions from regulating services like Vonage's DigitalVoice Service, which is an IP-PSTN or PSTN-IP service. *In the Matter of Vonage Holdings Corporation Petition for Declaratory Relief Concerning an Order of the Minnesota Public Utilities Commission,* WC Docket 03-211, Memorandum Opinion and Order, FCC 04-267, 2004 WL 2601194 (F.C.C.), 19 F.C.C.R. 22,404, 19 FCC Rcd. 22,404, 34 Communications Reg. (P&F) 442 (rel. November 12, 2004). The FCC referred, however, the question whether such similar IP-enabled services should be classified as unregulated "information services" or regulated "telecommunications," to its proceeding *In re: the Matter of IP-Enabled Services*, WC Docket No. 04-36 (hereinafter, the "*IP-Enabled Services* proceeding"). The decision on those issues in that proceeding has not yet issued. Also, the FCC did not state in its *Vonage* decision what this type of traffic is (i.e., "telecommunications services" or "information services"), or that jurisdiction would be determined by the physical location of the customer. The issue whether cable modems are an "interstate information

3. Moreover, like Time Warner Cable, with which TWCIS is affiliated, Horry and its affiliates provide cable television and cable modem service. T. 29, 78. Horry's arguments are obviously self-serving and contrary to both the letter and spirit of the Telecommunications Act of 1996 (the "Act"). T. 26-27, 81.

One of the most critical facts of the companion arbitrations involving MCI is that the parties have *already agreed* that the IP-enabled traffic that TWCIS generates will be treated similarly to other voice traffic covered by this agreement:

> The Parties disagree on the regulatory treatment of VoIP/IP-Enabled services. The Parties will incorporate [Federal Communications Commission] FCC rulings and orders governing compensation for VoIP/IP-Enabled services into the agreement once effective. Until such time, for the purposes of this agreement, VoIP/IP-Enabled traffic will be treated similarly to other voice traffic covered by this agreement, and the originating point of VoIP/IP Enabled traffic for the purpose of jurisdictionally rating traffic is the physical location of the calling party, i.e. the geographical location of the IPC.[2]

T. 112-13. Consequently, Horry, like its incumbent brethren in MCI's companion arbitration, has no standing to argue points of fact or law regarding the nature of the services TWCIS provides, how TWCIS characterizes its services, the regulatory treatment of IP-enabled service, or the effect of these "issues" on MCI's request for interconnection.

A requirement that carriers must invariably interconnect "directly" would not only be impracticable and contradict the very concept of a telephone "network," it would

---

service", or whether cable modem service is a "telecommunications service" or has a "telecommunications component," was recently decided by the U.S. Supreme Court in the *Brand X* case. *National Cable & Telecommunications Assoc. v. Brand X Internet Services, et al*, 545 U.S. ___ , 125 S.Ct. 2688, 05 Daily Journal D.A.R. 7749, 18 Fla. L. Weekly Fed. S 482, 05 Cal. Daily Op. Serv. 5631, 36 Communications Reg. (P&F) 173, 73 USLW 4659 (June 27, 2005). The Supreme Court upheld the FCC's decision to classify cable modem service as an information service.

[2] Section 1.6 of the interconnection attachment of the parties' interconnection agreement.

frustrate Congress' intent to reduce entry barriers and would create chaos within the industry. The Act was enacted to "provide for a pro-competitive, de-regulatory national policy framework" by "opening all telecommunications markets to competition."[3] It is that policy that the FCC, including in its recent orders dealing with the implementation of E911, has sought to advance by directing VoIP providers – which include TWCIS – to interconnect "indirectly through a third party, such as a competitive [local exchange carrier], directly with the Wireline E911 network, or through any other solution that allows the provider to offer E911 service".[4] T. 246-47. Horry's attempt to restrict interconnection traffic to traffic to and from end users of the interconnecting parties contravenes that and other national telecommunications policy, and is not sustainable under 47 U.S.C. § 253(a) or other law. T. 28-29, 71-74, 113. In contrast, MCI's proposed language comports with the Act and the FCC's interpretive rulings and therefore should be adopted.

I. HORRY MAY NOT LAWFULLY REFUSE TO INTERCONNECT WHEN MCI SEEKS TO PROVIDE SERVICES TO TWCIS AND TO EXCHANGE TRAFFIC THAT ORIGINATES WITH TWCIS (Serving Customers Directly Vs. Indirectly: Issues Nos. 2, 4(a), 7 and 9)

A. HORRY'S INTERPRETATION OF THE ACT'S INTERCONNECTION OBLIGATIONS WOULD EFFECTIVELY PRECLUDE FACILITIES-BASED CLECs FROM OFFERING WHOLESALE SERVICES TO OTHER CARRIERS

The overarching legal issue is whether the Act prohibits a CLEC from offering unbundled switching and related call processing functions – i.e., wholesale services – to other telecommunications carriers. First, there is no express language in the statute to that

---

3 S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

4 The *IP-Enabled Services* proceeding, First Report and Order and Notice of Proposed Rulemaking, FCC 05-116 (rel. June 3, 2005), ¶ 38.

effect and Horry is unable to cite any such explicit statutory authority. Second, Horry's interpretation of section 251 flies in the face of the pro-competitive intent of the Act. Under Horry's view, the Act would compel ILECs to offer unbundled access to network elements, but prohibit CLECs from doing the same. If CLECs are not allowed to interconnect to exchange the traffic of their wholesale customer's end users, they are effectively prohibited from offering other carriers the ability to use their switches on a wholesale basis. Finally, the FCC, in deciding the Triennial Review proceedings, relies on the availability of elements from other carriers on a wholesale basis as a basis for "de-listing" certain facilities as unbundled network elements under 47 U.S.C. § 251(c). Clearly the FCC has interpreted the Act to allow CLECs to offer their networks on a wholesale basis. A necessary premise underlying the FCC's interpretation of the Act is that these alternative suppliers have the ability to interconnect to exchange traffic.

B. MCI IS A "COMMON CARRIER" AND A "TELECOMMUNICATIONS CARRIER" THAT PROVIDES "TELECOMMUNICATIONS SERVICES" TO TWCIS

MCI seeks to interconnect with Horry pursuant to the Act. The parties have agreed that 47 U.S.C. § 251(a) applies to their agreement and this arbitration.[5] That subsection, in relevant part, states as follows:

> (a) General duty of telecommunications carriers
> Each telecommunications carrier has the duty—
> (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers;

[5] General Terms and Conditions attachment to the parties' interconnection agreement, p.1. Indeed, by the express language thus negotiated, the parties have agreed the *entire* Act applies, except for "service" MCI might otherwise seek under 47 U.S.C. § 251(c).

Horry argues that MCI is not a "telecommunications carrier" because MCI will not be providing "telecommunications services." and MCI is not a "common carrier."

"Telecommunications carrier" is defined by the Act as "any provider of telecommunications services . . . A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services." 47 U.S.C. § 153(44).[6] "Telecommunications services" are defined as:

> the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

47 U.S.C. § 153(46). MCI seeks to provide telecommunications services on a wholesale basis to TWCIS and other customers. In addition to interconnection, MCI would provide TWCIS with circuit switching, transport, number portability, directory assistance, operator service and E911. These are classic "telecommunications services." T. 34, 83. See T. 254-55. TWCIS, like other users of telecommunications, including carrier, business, governmental and individual users, is a member of "the public" whom MCI seeks to serve. By making telecommunication services available to TWCIS, which will then use those services to provide services to its end users, MCI is undeniably providing telecommunications services "to such classes of users as to be effectively available directly to the public, regardless of the facilities used." As stated by the FCC: "Common carrier services may be offered on a retail or wholesale basis because common

---

[6] Horry is unquestionably a "telecommunications carrier," so it has the duty to interconnect with other telecommunications carriers.

carrier status turns not on who the carrier serves, but on how the carrier serves its customers, i.e., indifferently and to all potential users."[7]

The services to be provided by MCI under the interconnection agreement are not limited to those provided for the benefit of TWCIS. This is not an instance in which MCI seeks interconnection to provide services solely for one customer.[8] MCI's contract with TWCIS is no different than the individually negotiated contracts that carriers have with other customers. MCI seeks to offer its services to other customers similarly situated to TWCIS. MCI also seeks to serve end user customers "directly," including ISP customers. Thus, MCI "holds itself out to serve indifferently all potential users," and "allows customers to 'transmit intelligence of their own design and choosing.'"[9] Thus, although MCI's wholesale service to TWCIS alone would suffice to establish MCI as a "telecommunications carrier," the availability of its services to other confirms that MCI meets that definition.

MCI also qualifies as a "common carrier," which the Act defines as:

> any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

---

7 *Triennial Review Order*, 18 FCC Rcd 16978 (2003), ¶ 152.

8 As the Commission stated in its July 20, 2005 Order Denying Petition for Rehearing or Reconsideration in MCI's companion arbitration, "[w]hereas some of the issues may certainly have been related to the service of TWCIS customers through MCI, it appears to this Commission that the issues also had general applicability to the service of other customers as well." pp. 4-5. MCI does not endorse the Commission's conclusion denying intervention.

9 *Triennial Review Order, supra*, ¶ 152, citing *National Ass'n f Regulatory Utility Commissioners v. FCC*, 533 F.2d 601, 608-09 (1976).

47 U.S.C. 153 (10). As discussed above, MCI intends to provide service to TWCIS, which in turn provides service to the public at large, and in addition MCI's services will be available to other carriers and end user customers. [10] Horry's claim that MCI would not be a common carrier therefore has no merit.

C. MCI IS ENTITLED TO REQUEST INTERCONNECTION TO SERVE WHOLESALE CUSTOMERS

MCI seeks to interconnect with Horry at an interconnection point touching both networks pursuant to Section 251(a) of the Act. Horry would have the Commission read the Act in a way that prevents MCI from interconnecting for the purpose of providing wholesale switching and other telecommunications services to another carrier. But Section 251(a) does not limit the purpose of interconnection to providing services "directly" to a requesting carrier's customers, let alone "directly" to the requesting carrier's "end users" as Horry claims. T. 70. The Act's definition of "telecommunications services" does not even employ the term "end user," but rather, as just noted, uses the term "classes of users." 47 U.S.C. § 153(46). Clearly, TWCIS belongs to a "[class] of users" such that MCI's wholesale services are "effectively available directly to the public." MCI is therefore not required to provide retail services directly to end user customers before it can qualify to interconnect with Horry.

Horry apparently concedes that 47 U.S.C. § 251(a) requires it to interconnect with MCI. ("Horry does not have any difficulty giving a telecommunications provider the opportunity to directly or indirectly interconnect with Horry's network.") T. 132. Horry,

---

[10] See *In re Cable & Wireless*, PLC, 12 FCC Rcd 8516, 8521-22 (1997).

however, argues that section 251(a) does not require it to *exchange* traffic and that only section 251(b) requires the exchange of traffic. This argument defies reason because it would be absurd to interconnect under section 251(a) if one cannot exchange traffic. T. 70-71. In any case, the point is academic because the parties have agreed that *both* section 251(a) and (b) apply. Subsection 251(b) states in pertinent part:

> (b) Obligations of all local exchange carriers
> Each local exchange carrier has the following duties. . .
>
> (2) Number portability
> The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission. . .
>
> (5) Reciprocal compensation
> The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

Subsection 251(b) thus clearly obligates the parties to establish arrangements for the transport and termination of traffic. T. 76. The *Atlas* decision[11] cited by Horry therefore is legally as well as factually irrelevant.

Horry claims that it is not required to exchange traffic with MCI because section 251(b) refers to the obligations of "local exchange carriers." This contention is misguided for several reasons. First, Horry does not deny that it is a "local exchange carrier," and therefore it is obligated to exchange traffic with requesting carriers. MCI, as the requesting carrier, does not have to establish under the express terms of the statute

---

[11] *In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc., v. AT&T Corp.*, File No. E-97-003, 16 F.C.C.R. 5726, Memorandum Opinion and Order, FCC01-84 (rel. March 13, 2001). In that case, a sham entity was created to terminate long distance calls, while charging high access charges. In any event, neither local exchange traffic nor compensation for terminating local traffic was involved. Nothing in *Atlas* requires a "direct contractual relationship" between Horry and TWCIS.

that it is *itself* a "local exchange carrier." Second, the parties have agreed that they will treat all non-ISP-bound voice traffic like other voice traffic, and will pay each other intercarrier compensation for such traffic, including reciprocal compensation for intraLATA traffic and access charges for interLATA traffic, based on the physical location of the calling party. MCI has obligated itself to act reciprocally with regard to the transport and termination of the traffic to be exchanged under the agreement, thus addressing Horry's objections in that regard.

Horry, however, contends that it is not obligated under section 251(b) to transport and terminate traffic if the requesting carrier seeks to provide services to a *third party* that is not an end user. As in the companion arbitration, paragraph 1034 of the Local Competition Order[12] is offered as authority for this contention. But in discussing reciprocal compensation in the situation "in which two carriers collaborate to complete a local call," the Local Competition Order does not state or imply that two carriers may not collaborate to complete a local call that originates on a third party's network, or that carriers are limited in what types of customers they serve. Indeed, the Local Competition Order recognizes that indirect traffic will be exchanged via interconnection. T. 74-75.

Failing to find support elsewhere, Horry pins its hopes on 47 C.F.R. § 51.701(e), which refers to compensation paid by one carrier to another carrier "for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier." Nothing in Rule 51.701(e), however, which refers only to *compensation*, limits the *exchange* of traffic under section

---

12 *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499 (1996) (subsequent history omitted).

251(b) to traffic "directly" originated by the interconnecting carriers' end user customers. If the rule did so limit traffic exchange, terminating carriers, for example, would be able to block traffic from transiting carriers. Again, Horry, which clearly understands that a principal purpose of interconnecting is to exchange traffic generated by TWCIS, has already agreed to treat IP-originated traffic the same as other traffic. Hence the term "telecommunications traffic that originates on the network facilities of the other carrier" does not, as Horry implies, exclude an obligation to interconnect for the purpose of exchanging traffic that originates as IP.[13]

Failing to find that the Act *prohibits* interconnection for the purpose of providing services to another carrier, Horry contends that there is no specific affirmative authority for MCI *to* interconnect for the purpose of providing services to or exchanging traffic from another carrier. But the fact that MCI connects its network with TWCIS, an entity which, under the interconnection agreement, is not an end user customer, does not prevent MCI's interconnection with Horry or with other ILECs. If it did, no carrier could interconnect for the purpose of providing, for example, wholesale services, or a transiting function, or exchange access to other carriers. These are services for which Horry is interconnected with other carriers, and for which interconnection is permitted under the Act. Such "indirect" interconnection typically involves no contractual relationship between end users or their carriers and other interconnecting carriers. For example, in a transit arrangement a CLEC may interconnect with an ILEC to terminate a "third party" carrier's traffic. The "third party" carrier must receive, through the transiting carrier, the

---

[13] See 47 C.F.R. §51.100(b), discussed *infra*. Indeed, as discussed below with reference to ISP-bound traffic, there is no requirement that interconnection arrangements carry merely "local" traffic. While MCI has voluntarily agreed not to do so with its arrangements with these ILECs, interLATA and IntraLATA traffic can be put on local interconnection trunks.

CLEC's traffic as well. T. 255, 257. Such "indirect" service arrangements are not only authorized under the Act, but are necessary for efficient network engineering; otherwise, each local exchange carrier would have to connect with every other local exchange carrier, regardless of traffic volumes.

D. IT IS IRRELEVANT WHETHER TWCIS IS A TELECOMMUNICATIONS CARRIER OR PROVIDES "TELECOMMUNICATIONS SERVICES"

Because Horry in any event does not contend that TWCIS is not offering "telecommunications services," T. 241-43, 245, it should not be heard to contend that it is not obligated to interconnect because TWCIS is providing a non-telecommunication service (i.e., "information services"). Even if Horry could maintain such a distinction, it would have no legal basis upon which to effectively deny interconnection, because the FCC's rules clearly provide otherwise. 47 C.F.R. § 51.100(b) states:

> A telecommunication carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.

MCI seeks to offer telecommunications services "through the same arrangement" to its own end user customers, e.g., ISPs, as well as to TWCIS. Moreover, the telecommunications service that MCI seeks to provide TWCIS will be "effectively available directly to the public, *regardless of the facilities used*" by TWCIS. 46 U.S.C. § 153(46). (Emphasis added.) T. 112. Therefore, the contention that some IP-originated traffic may be considered "information services" does not excuse Horry from refusing to exchange traffic with MCI. See T. 32-33.

Nor could Horry, any more than the ILECs in MCI's companion arbitration, maintain straight-faced that interconnection may be denied on the basis of the type of service TWCIS provides. IP is being used by many carriers, including Spirit Telecom and Horry's affiliates, to efficiently transport, as well as originate and terminate, transmissions of voice, data and video. As demonstrated by their interconnection agreements with other carriers, ILECs and their affiliates in South Carolina are exchanging VoIP-originated traffic with other carriers,[14] and undoubtedly already exchange such traffic with MCI. These agreements, like the interconnection agreements MCI has entered into with other ILECs, provide the same or similar terms to what MCI is requesting here: i.e., that no distinction be drawn for providing service "directly" to end users. Moreover, in several places the ILECs' affiliates' interconnection agreements with BellSouth Telecommunications, Inc. ("BellSouth") expressly permit the exchange of traffic generated by third parties.[15] These affiliates undoubtedly must procure and port NPA-NXX codes for their VoIP service to enter the PSTN, and these NPA-NXX codes are probably associated with the ILECs' "local" calling area. T. 81-82, 113-114. As such, ILECs already are apparently using VoIP service to bypass interstate and intrastate access charges, or, at least, are basing intercarrier compensation on NPA-NXX codes not associated with geographic location. Consequently, it is disingenuous for Horry to argue that other local exchange carriers should not be permitted to exchange traffic that

---

[14] The Home Telephone Company's ("Home's") affiliate's interconnection agreement with BellSouth Telecommunications, Inc. ("BellSouth"), attachment 3, section 8.1.6, states that the traffic exchanged should include "all traffic, regardless of the transport protocol method." Hargray's affiliate's interconnection agreement with BellSouth is silent as to whether the affiliate will pass VoIP to BellSouth. T. 79. The Commission took judicial notice of these interconnection agreements, which also were extensively discussed in evidence in the companion arbitration. T. 13-14.

[15] See MCI Hearing exhibit 1 (GJD exhibit 2); specifically, Hargray's affiliate's interconnection agreement with BellSouth, Attachment 3, sections 9.3, 1.9.2 and 1.10; Home's affiliate's agreement with BellSouth, attachment 3, section 3.1 and 5.2; and PBT's agreement with BellSouth attachment 3, section 1.9.2, 1.10 and 8.3. See footnote 14, *supra*.

originates as VoIP.[16] The concession MCI has offered - to treat all non-ISP-bound traffic the same for intercarrier compensation purposes - places its and TWCIS' VoIP services at a significant competitive *disadvantage* versus the services Horry and its affiliates offer.

E. THE DECISIONS OF THE MAJORITY OF OTHER STATE UTILITY COMMISSIONS REFUTE HORRY'S CLAIMS

In recent cases before the Ohio, New York and Illinois utilities commissions, arguments similar to those of Horry have been rejected. Rural ILECs in Ohio argued that MCI was not offering services "directly" to the public. The Ohio Public Utilities Commission has declared:

> 47 U.S.C. [paragraph] 153(a) (1) and (c) (2) require [the ILECs] to interconnect with other 'telecommunications carriers' and that 47 U.S.C [para] 153 defines a 'telecommunications carrier' as 'any provider of telecommunications services.' The Commission also observes, as do [the ILECs], that the 47 U.S.C. [para] 153 definition of 'telecommunications service,' is 'the offering of telecommunications for a fee directly to the public, or to classes of users as to be effectively available to the public, regardless of facilities used.' Applying this definition to MCI and its [bona fide request to interconnect], the Commission notes that MCI will doubtless collect a fee for providing telecommunications via interconnection with [the ILECs]. Further, MCI's arrangement with Time Warner will make the interconnection and services that MCI negotiates with [the ILECs] 'effectively available to the public, regardless of the facilities used.'[17]

T. 27-28. Likewise, the New York Public Service Commission has rejected the same arguments raised by Horry. In the New York case, ILECs argued that section 251(b) of the Act does not require them to interconnect with Sprint, which had entered into a business arrangement with TWCIS to offer voice service in competition with the ILECs.

---

[16] Section 2.23 of the parties' interconnection agreement also describes an "interexchange carrier" as "(a) telecommunications carrier that provides, directly or indirectly, InterLATA or IntraLATA telephone toll services." See T. 28.

[17] Order on Rehearing, *In the Matter of the Application and Petition in Accordance with Section II.A.2.b of the Local Service Guidelines Filed by: The Champaign Telephone Co., Telephone Services Co., The Germantown Independent Telephone CO, and Doylestown Telephone Co.*, ¶15, p. 13 (April 13, 2005).

The ILECs similarly attempted to limit the definition of "end user" to only the end users of Sprint. As in the Ohio decision, the New York commission found that Sprint's agreement to provide TWCIS with interconnection, number portability, order submission, E911 and directory assistance, among other services, meets the definition of "telecommunications services:"

> While Sprint may act as an intermediary in terminating traffic within and across networks, the function that Sprint performs is no different than that performed by other competitive local exchange carriers with networks that are connected to the independents. Sprint meets the definition of "telecommunications carrier" and, therefore, is entitled to interconnect with the independents pursuant to section 251(a). We find unpersuasive the independents' claim that their section 251(b) duties as local exchange carriers are not triggered because Sprint is not an ultimate provider of end user services.[18]

Earlier this year, the Illinois Commerce Commission[19] rejected the analysis of the Iowa Utilities Board,[20] upon which Horry relies. The Illinois commission's decision concerned Sprint's efforts to interconnect with rural ILECs, to provide services to the affiliate of a cable provider. Sprint's services are similar to those provided by MCI to TWCIS. Arguing that Sprint is not providing "telecommunications services" and is not a "common carrier," the ILECs contended that Sprint is a "private carrier" that, under the *Virgin Islands Telephone* decision,[21] is not entitled to interconnection. The Illinois commission, however, found that Sprint "does indiscriminately offer its services to a

---

18 *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies*, Case 05-C-0170, Order Resolving Arbitration Issues, p. 5 (May 18, 2005). T. 184-85.

19 *Cambridge Telephone Company, et al, Petitions for Declaratory Relief and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for any other necessary or appropriate relief*, 05-0259, etc., Order (July 13, 2005).

20 *In re Arbitration of Sprint Communications Company, L.P. v. Ace Communications Group, et al.*, Docket no. arb-05-2, Order Granting Motions to Dismiss, (May 26, 2005)

21 *Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999).

class of users so as to be effectively available to the public."[22] The Illinois commission also found that Sprint does not alter the content of voice communications by end users.

The Illinois commission's ruling is particularly helpful in the wake of the recent decision of the Nebraska Public Service Commission.[23] The Nebraska commission found that the definition of "end user or end user customer" in an arbitrated interconnection agreement between an ILEC and Sprint should not include end users of TWCIS, for whom Sprint provides interconnection and other telecommunications services. The Nebraska commission also found that the definition of "reciprocal compensation," for purposes of the agreement, should not include what the commission referred to transportation and termination of "third party traffic." Thus the only traffic that the Nebraska commission would allow to be exchanged under the arbitrated agreement is "that which is generated by or terminated to the end user customers...for which both [the ILEC] and Sprint shall compete to provide retail end user services."[24]

In the Nebraska case, Sprint stated that any agreement with any other entity to provide the same services will be "individually tailored."[25] Sprint also expressed no intention to provide any retail telecommunications services.[26] Neither of those findings could be made by the Commission in this case; however, even if, *arguendo*, the Commission could so find, the Nebraska case was wrongly decided. Clearly, Sprint's arrangement with TWCIS is little different from an individually negotiated "commercial"

---

22 *Cambridge Telephone Company, et al, supra*, at p. 12.

23 *In the Matter of Sprint Communications Company L.P., Overland Park, Kansas, Petition for arbitration under the Telecommunications Act, of certain issues associated with the proposed interconnection agreement between Sprint and Southeast Nebraska Telephone Company, Falls City*, Findings and Conclusions, Application No. C-3429 (September 13, 2005).

24 Id. at p. 13.

25 Id. at p. 9.

26 Id. at p. 4.

agreement that BellSouth and other Regional Bell Operating Companies enter into with CLECs to provide interconnection and unbundled facilities, or an individually-negotiated contract service arrangement, which the Commission routinely accepts from ILECs, for providing services to businesses. Carriers also negotiate other wholesale arrangements with other carriers. All of these agreements are subject to common carrier regulation. Moreover, unlike the Nebraska negotiations, in MCI's interconnection agreements that are before the Commission, the parties have already agreed on the terms of reciprocal compensation for non-ISP-bound traffic. In any event, the Nebraska commission's strained reading of the terms "transport," "termination" and "reciprocal compensation" in the FCC's rules ignores the actual configuration of the PSTN. Certainly the FCC has not stated that there should be no reciprocal compensation when more than two carriers are involved in the transport and termination of traffic. Hence the FCC, for example, has requested comments regarding the appropriate compensation between carriers pursuant to 47 U.S.C. § 251(b)(5) in such circumstances, which necessarily implies that the statute, and, consequently, the rules enacted pursuant to the statute, do not foreclose the application of reciprocal compensation to "three-carrier calls."[27] The Nebraska commission, like the Iowa commission, has also invited judicial review pursuant to 47 U.S.C. § 253(a), based on the obvious conflict of its decision with national policy. The reasoned decision of the Illinois commission offers much better guidance to this Commission.

---

[27] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 01-132, Notice of Proposed Rulemaking (rel. April 27, 2001), ¶ 71.

F. NONE OF THE LIMITATIONS HORRY URGES REGARDING NUMBER PORTABILITY IS JUSTIFIED BY THE FACTS OR THE LAW

Horry seeks to impose several conditions that are unjustified by law or policy. First, Horry wants to restrict porting to the "same type of" service that the end user (whose number is being ported) previously had; i.e., "telecommunications services." Horry, however, is not prepared to say that what TWCIS originates is *not* telecommunications services, and Horry's affiliates and Spirit Telecom necessarily must rely on ported numbers, which, presumably, they obtain from Horry and other ILECs. T. 82. The restriction urged by Horry is not found in the Act; further, Horry contradicts itself by admitting that wireline to wireless porting is acceptable. Moreover, whether or not a TWCIS end user receives "telecommunications service" from TWCIS is a question within the FCC's jurisdiction. It is not within the Commission's jurisdiction to conclude that TWCIS does not offer telecommunications service. In any event, after the number is ported the end user customer receives operator services, E911 and local number portability from MCI: these are "telecommunications services." T. 83. Thus, the premise upon which Horry bases its argument is flawed.

Second, Horry wants to restrict the use of the ported number to the same location. Ironically, as was demonstrated in MCI's companion arbitration, the way in which ILEC affiliates provide VoIP service violates this criterion, to the extent numbers are not associated with the pre-port location, but may be used at different locations with *Vonage*-type VoIP service Incidentally, although Horry's second criterion is not found in the Act, the manner in which MCI and TWCIS plan to engage in number portability will indeed result in the same end user retaining the number both before and after the port. He or she also will remain in the same location before and after the port. T. 82, 85.

Third, Horry questions whether MCI or TWCIS would port numbers to other carriers. This statement is irrelevant as well as misplaced. As is the case with any interconnecting carrier, MCI is obligated to provide dialing parity and local number portability. See 47 U.S.C. § 251(b)(2), (3). The latter applies when, for example, a TWCIS end user's telephone number is ported to an ILEC. The systems used by the industry, including by MCI (for TWCIS), are not dependent on any such release of the number by the current or "losing" provider of service, and MCI (for TWCIS) would not prevent the end user from moving to another provider. MCI and Horry also have agreed to language that would require proof of customer authorization of change in service should "slamming" be suspected.[28] T. 86. Horry's position is contrived and is simply an effort to block facilities-based competition in its service area. T. 34-35.

Finally, Horry also suggests that "the end user must be switching from a telecommunications carrier to another telecommunications carrier." Such a requirement is not imposed by the express language of 47 U.S.C. 251(b)(2) or otherwise under law. In any event, and as discussed above, MCI *is* a telecommunications carrier and, as such, is porting numbers from Horry. T. 34, 83.

The FCC has already gone one step further than what MCI is requesting and, in its *SBCIS* order,[29] has directed that telephone numbers be provided directly to a VoIP provider. The FCC therein stated: "To the extent other entities seek similar relief we would grant such relief to an extent comparable to what we set forth in this Order."

---

[28] § 6.3.3 of Ordering attachment.

[29] *In the Matter of Administration of the North American Numbering Plan, CC Docket 99-200, Order*, FCC 05-20, 2005 WL 283273 (F.C.C.), 20 F.C.C.R. 2957, 20 FCC Rcd. 2957 (rel. February 1, 2005 ("SBCIS Order"). In this Order the FCC granted SBCIS waiver of 47 C.F.R. §52.15(g)(2)(i) so that SBCIS did not have to obtain an interconnection agreement in order to obtain numbers for its customers.

Further, the FCC did not condition granting similar waivers on completion of its "request" that the North American Numbering Committee "review whether and how our numbering rules should be modified to allow IP-enabled service providers access to numbering resources in a manner consistent with our numbering optimization policies."[30] T. 35-36, 85.

Certainly the FCC does not condone ILEC efforts to block VoIP traffic.[31] The efforts of ILECs to restrict number portability for third parties should likewise be rejected as an illegal effort to block Time Warner's VoIP business and MCI's wholesale operations. Recently, the FCC made it clear that it would not tolerate discrimination among different landline porting of telephone numbers. Responding to comments from Time Warner Cable and others, the FCC stated:

> We take this opportunity to remind carriers that the Act requires [citing 47 U.S.C. 251(b)(2)] and we intend to enforce, non-discriminatory number porting between LECs, including our previous conclusion 'that carriers may not impose non-porting related restrictions on the porting out process.' Because of these requirements, when an incumbent LEC receives a request for number portability, it is required to observe the same rules, including provisioning intervals, as any other LEC and cannot avoid its obligations by pleading non-porting related complications or requirements such as the presence of DSL service on a customer's line. We also retain the authority to evaluate specific objections to incumbent LEC's porting policies in proceedings seeking enforcement action.[32]

---

30 SBCIS Order, at ¶11, p. 7. The FCC also noted that:

> a few commenters urge the Commission to address SBCIS's petition in the current *IP-Enabled Services* proceeding. We decline to defer consideration of SBCIS's waiver until final numbering rules are adopted in the *IP-Enabled Services* proceeding. The Commission has previously granted waivers of Commission rules pending the outcome of rulemaking proceedings, and for the reasons articulated above, it is in the public interest to do so here.

Id.

31 See *In the Matter of Madison River Communications, LLC and affiliated companies,* File No. EB-05-IH-0110, Order, DS 05-543, 2005 WL 516821 (F.C.C.), 20 F.C.C.R. 4295, 20 FCC Rcd. 4295 (rel. March 3, 2005).

32 (sic) (footnotes omitted.) *In the Matter of BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers*

That order dealt with the situation in which there has been delay in porting a customer served by the ILEC's DSL service to service provided by a cable modem. Horry's proposed restriction on the porting carrier "directly" servicing the end user is not any less discriminatory. T. 36-37.

Therefore, the FCC is not delaying access to numbers until final numbering rules for IP-enabled services are developed. There are no applicable restrictions on telecommunications carriers, such as MCI, that would block it from issuing orders to port numbers under current industry standards. The Commission should see through the ILECs' contrived arguments, and accept MCI's proposed language. T. 37, 87. MCI's proposed language, if accepted, would provide reduced rates and competitive choice to South Carolina consumers. T. 218-19.

,WC Docket No. 03-251, Memorandum Opinion and Order and Notice of Inquiry, 05-78, 2005 WL 704118 (F.C.C.), 20 F.C.C.R. 6830, 20 FCC Rcd. 6830, 35 Communications Reg. (P&F) 1063, ¶36 (rel. March 25, 2005). In a separate statement, Commissioners Michael Copps and Jonathan Adelstein emphasized:

> We join today's decision, however, in one key aspect. We support the effort in this action to reinforce non-discriminatory number porting, including between wireline and cable carriers. Congress was clear that number portability is a basic duty of local exchange carriers. Because this decision accurately clarifies this requirement, we approve in part.

II. ISP-BOUND TRAFFIC USING VIRTUAL NXX SHOULD BE TREATED LIKE OTHER ISP-BOUND TRAFFIC (ISP-Bound Traffic/Virtual NXX: Issues Nos. 3, 4(b) and 5)

This group of issues is unrelated to providing service to Time Warner; for purposes of this proceeding, MCI will use "virtual NXX"[33] in a limited respect, i.e., only for users to make local calls to ISPs. MCI will not assign virtual NXX codes, as a result of this proceeding, to TWCIS customers. T. 51. By using "virtual" NXX codes, MCI can provide ISPs with a number that is a "local" call to the end user, thus providing an alternative, particularly to those end users still using dial-up Internet service, to the use of the ILECs' broadband and dial-up products. This alternative is particularly important since CLECs, or their ISPs, cannot collocate their modem banks at the ILECs' central offices, but rather, typically must locate modem banks at locations outside the ILECs' territories. See T. 61.

As was extensively discussed in MCI's companion arbitration, MCI plans to interconnect at the ILECs' switches. MCI will then, by using its own facilities, transport the call that originates with an ILEC's end user to MCI's switch. If the call is destined to be transmitted to an ISP, MCI will then send the call to the ISP's modem banks, using

---

[33] NXX codes are comprised of the fourth through the sixth digits of a ten digit telephone number. These codes are used to identify rate centers. "Virtual" NXX allows a customer to obtain a telephone number in a local calling area in which the customer is not physically located. As far as the person calling the number may be concerned, the call is local; however, the person answering the call is actually located physically somewhere else in the LATA. Virtual NXX is similar to "foreign exchange" ("FX"), although there are some technical differences between them. *In re: Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Docket No. 2000-516-C, Order on Arbitration, Order No. 2001-045 (January 16, 2001), pp. 4-5 ("*Adelphia*"). ILECs also use virtual NXX codes.

MCI's facilities. In its *ISP Remand Order*,[34] the FCC assumed jurisdiction to determinate compensation between carriers for calls to ISPs. The FCC described such calls as "interstate access service." The FCC rejected the analogy, upon which Horry relies, of ISP-bound traffic to calls to "pizza parlors," because ISP-bound calls do not terminate locally. The FCC instead found that calls terminate (often numerous times during any given call) at the end points of the calls; i.e., not at an ISP's modem banks, but at servers that are located out of state, and, indeed, outside the United States.. Thus the FCC concluded that ISP-bound traffic is "largely interstate." Such traffic is subject to compensation under 47 U.S.C. §251(g), rather than to reciprocal compensation for the termination of local calls under 47 U.S.C. §251(b)(5), and is not at all subject to the access charge regime. The *ISP Remand Order* determined that the rate would be $.0007 per minute. Thereafter, the *Core* order[35] removed the rate and volume caps for such traffic and made that rate permanent. T. 58-59, 105-07.

Like the ILECs in MCI's companion arbitration, Horry agrees that if the ISP's modem banks are *physically* located within the geographic area for which a call between the starting point of the call and the modem would be considered "local," the carrier serving the ISP is entitled to compensation for the transport and termination of the call. At the same time, Horry also agrees that pursuant to the *ISP Remand Order* the carrier whose customer originated the call is not entitled to originating access charges.

---

[34] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 F.C.C.R. 9151, CC Docket No. 96-98, Order on Remand and Report and Order, FCC 01-131, 2001 WL 455869 (F.C.C.), 16 F.C.C.R. 9151, 16 FCC Rcd. 9151 (rel. April 27, 2001), remanded but not vacated, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

[35] *In The Matter Of Petition Of Core Communications, Inc. For Forbearance Under 47 U.S.C. § 160(C) From Application Of The ISP Remand Order*, WC Docket No. 03-171, Order, FCC 04-241 (rel. October 18, 2004) (hereinafter, the "*Core*" or "*CoreCom*" order).

The dispute concerns what should occur when the modem banks are physically located outside the geographic area for which a call between two end points within that area would be considered "local." Such a call is unquestionably "interstate" under the FCC's analysis. For such calls, there is no difference in the interconnection arrangement so far as the ILEC's facilities and MCI's interconnection with them are concerned; the point of interconnection (where the responsibility for costs is established) remains at the ILECs' central offices. Thus the ILECs assume no additional costs when the modem banks for MCI's customers are located outside the geographic "local" area. And just as when the modem banks are physically located in the same area as the caller, the customer who calls the ISP considers the call to be "local." In either event the caller is billed as a "local" call.

In Horry's view, therefore, compensation to the carrier serving the ISP would be payable at the $.0007 rate only if the modem is physically located within the geographic scope of the "local" area. Notwithstanding the "interstate" nature of the call, a call to such a modem would not be treated as a long distance call and access charges would not apply. If the modem, however, happens to be physically located outside the geographic "local" area of the caller, then, even with no change in the interconnection arrangement, the ILECs would deny compensation to the carrier serving the ISP, and instead demand access, at $.01 per minute (for intrastate access) or more (for interstate access). Payment of access to the ILECs effectively ensures their hold over internet access, since CLECs cannot under those circumstances compete for customers in the ILECs' territories.

There is nothing, however, in the *ISP Remand Order* that indicates that the FCC considered "local" calls to ISPs whose modem banks are outside the caller's "local" area

to be beyond the scope of the FCC's jurisdiction, not subject to the FCC's compensation regime, or subject to access charges. T. 58. The references in the *ISP Remand Order* to calls within "a local calling area" do not demonstrate that the FCC intends to treat calls to ISPs with local NPA-NXX codes differently, depending on where the ISP's modem banks are located. See *ISP Remand Order* at ¶1 ("we reaffirm our previous conclusion that traffic delivered to an ISP is predominantly interstate access traffic subject to section 201 of the [Communications Act of 1934, as amended]"). "Local calling area" is a term used by the FCC to denote calls which, while "local" to the caller because of the NPA-NXX dialed, remain nevertheless "interstate" for purposes of jurisdiction and the FCC's unique compensation regime for ISP-bound traffic. T. 106.

Moreover, it would have been absurd for the FCC to have delimited treatment of ISP-bound traffic to calls to ISP modem banks within the caller's geographically "local" area, when the end points of the call are interstate and international. Yet this is exactly the illogic in which the ILECs in these arbitrations engage, in arguing that the FCC did not assume regulation of ISP-bound traffic when the modem is located physically outside the local calling area.[36] There is no meaningful distinction to be drawn based on location of the modem banks, and it would have been absurd for the FCC to have done so, given

---

[36] The ILECs contend that a court has "recognized" that the *ISP Remand Order* applies only to calls made to modems physically located in an area served by a local call. As a means to synopsize the ISP Remand Order on appeal, the D.C. Circuit simply referred to the order as compensation "provisions" of the FCC applicable "only to calls made to [ISPs] located within the caller's local calling area." *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). There was no question before the court as to the scope of the FCC's intended compensation "provisions" and the court's shorthand characterization was not intended as a ruling on the merits.

the goals of encouraging interconnection and the growth of advanced services, as well as given the "interstate" nature of ISP-bound traffic.[37] T. 108-09.

Nor is there any evidence the FCC considered compensation for ISP-bound calls to harm the access charge regime when the CLEC's modems are physically located outside the local calling area. It is particularly troubling that the ILECs make such an argument, when they offer broadband and dial-up internet access, and when use of their affiliates' VoIP products almost certainly cannot result in accurate determination of the end points of the call for intercarrier compensation. T. 109.

In its *Adelphia* decision,[38] the Commission determined the compensation regime applicable to virtual NXX generally. That decision, however, did not specifically concern calls to ISPs,[39] and was issued before the FCC assumed jurisdiction and determined the compensation for such calls in its *ISP Remand Order*. Subsequent to the *ISP Remand Order*, the Commission issued its *US LEC* decision.[40] In that order, the Commission acknowledged:

> [T]he D.C. Circuit has remanded the ISP Remand Order, but has expressly refused to vacate the order, as a result, the rules the FCC adopted remain in effect pending further FCC proceedings on remand. The FCC's ISP Remand Order sets forth a specific intercarrier compensation regime that concerns the exchange of ISP-bound traffic between Verizon South and US LEC during the course of this arbitrated agreement. This issue arises to address possible solutions in case there is a

---

37 Cf. *MCImetro Access Transmissions Services. Inc. v. BellSouth Telecommunications, Inc.*, 352 F.3d 872 (4th Cir. 2003) (permitting ILEC to charge CLEC for cost of transporting calls originating on local exchange carrier's network to CLEC's chosen point of interconnection (POI) violates 47 C.F.R. 703(b), promulgated under section 251(b)(5) of Telecommunications Act, which prohibits local exchange carriers from charging for calls originating on their own networks.)

38 See footnote 33, *supra*.

39 MCI's position is consistent with the *Adelphia* decision as it relates to non-ISP bound traffic.

40 *In re: Petition Of US LEC Of South Carolina, Inc. For Arbitration With Verizon South, Inc., Pursuant To 47 U.S.C. 252(b) Of The Communications Act Of 1934, As Amended By The Telecommunications Act Of 1996*, Docket 2002-181-C, Order on Arbitration, Order No. 2002-619 (August 30, 2002).

> subsequent change of law on this point during the term of the interconnection agreement. Federal law does not obligate Verizon South, or entitle this Commission, to impose rules to address potential contingencies with respect to the meaning of federal law. Compensation for ISP-bound traffic, and all reciprocal compensation traffic, should be paid in conformance with federal law which governs the issue.[41]

Thus the Commission has recognized the applicability of the *ISP Remand Order*, and its continued vitality, with regard to ISP-bound traffic. T. 58.

Other state commissions have ruled in favor of CLECs as regards this issue. For example, the Alabama Public Service Commission has determined that ISP-bound virtual NXX calls are predominantly considered "interstate" and thus are subject to FCC jurisdiction.[42] The Alabama commission further concluded that carriers may continue to assign telephone numbers to end users physically located outside the rate center to which the numbers they are assigned are homed. The Alabama commission also noted that ILECs have traditionally treated virtual NXX traffic as local in all respects, including with regard to intercarrier compensation. Likewise, the Texas Public Utility Commission upheld a finding that

> the compensation mechanism in the *ISP Remand Order* shall apply to all ISP-bound calls. The Arbitrators stated that "all ISP-bound traffic falls under the compensation mechanism outlined in the ISP Remand Order. Consequently, the Arbitrators found that all ISP-bound traffic, whether provisioned via an FX/FX-type arrangement or not, is subject to the compensation mechanism contained in the FCC's *ISP Remand Order*.' Consistent with this conclusion, the Commission withdraws its decision applying access charges to traffic bound for ISPs outside the local calling area.[43]

---

41 Id. at p. 30.

42 *Declaratory Ruling Concerning the Usage of Local Interconnection Services for the Provision of Virtual NXX Service*, Docket 28906, Declaratory Order, Alabama Public Service Commission (April 29, 2004).

43 Order on Reconsideration, in *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Intercarrier Compensation for "FX-Type" Traffic Against Southwestern Bell Telephone Company*, Docket No. 24015, Texas Public Utility Commission (2004).

Accordingly, such calls are appropriately within the scope of interconnection agreements and may be transmitted on "local" interconnection trunks.

In these arbitrations, only MCI's language is consistent with the FCC's mandate that "consumers are entitled to competition among network providers, application and service providers, and content providers."[44] ISPs cannot practically locate equipment in every LATA that has end user customers they seek to serve. If the Commission accepts Horry's position, the costs of servicing South Carolina consumers will increase dramatically, driving ISPs from the market and leaving consumers to the incumbent's and their affiliates' products. T. 114-15. For all of these reasons, the Commission should approve MCI's language.

III. MCI IS ENTITLED TO COMPENSATION OF $.0007 PER MINUTE FOR ISP-BOUND TRAFFIC (Reciprocal Compensation Rate: Issue No. 10)

MCI proposes the rate of $.0007 per minute for "out of balance" non-ISP-bound "local" traffic and for "out of balance" ISP-bound traffic. T. 59-60. As stated in the contract language concerning Issue No. 5, for such traffic deemed "local," "bill and keep" rather than reciprocal compensation shall govern, assuming the traffic is not "out-of-balance." [45] If such "local" traffic is "out of balance," MCI proposes that reciprocal compensation be paid. For non-ISP-bound calls that, based on the end points of the call, are deemed to be intraLATA "toll" traffic, MCI has agreed to "bill and keep" rather than access charges, if, as proposed by MCI, traffic is not "out of balance." If intraLATA "toll" traffic is "out of balance," MCI would accede to access charges. MCI has also

---

44 Action by the FCC August 5, 2005, by Policy Statement (FCC 05-151).

45 "Out of balance" traffic occurs when one party terminates more than 60% of total "local" traffic exchanged between the parties.

committed to provide required signaling parameters and to utilize separate local and toll trunk groups for the exchange of such traffic, thereby enabling Horry to accurately apply access charges to traffic.

Horry makes two arguments: 1) MCI did not negotiate the terms of such compensation; and 2) Horry is not "opting into" the "interim" compensation scheme established by the FCC in its *ISP Remand Order*. These arguments are spurious and should be summarily rejected.

With regard to the first contention, MCI negotiated on the basis of the applicability of the *ISP Remand Order* to ISP-bound traffic between the parties. Horry does not dispute that the FCC's order was the subject of negotiations. The $.0007 rate was determined by the FCC in that order. Hence Horry's claim is without merit. T. 62, 107. It is particularly egregious that Horry, which is represented by the same consultants as were the ILECs in MCI's companion arbitration, should make this argument when the compensation for ISP-bound traffic has been the topic of debate for many months, in two negotiations for interconnection agreements.

Concerning the second argument, $.0007 is no longer an "interim" rate, as a result of the *Core* decision. Moreover, the ILECs twist the language of the *ISP Remand Order*: the FCC stated that the rate and volume *caps* on compensation applied by that order would apply only if an ILEC offered to exchange all traffic subject to section 251(b)(5), i.e., for all "local" traffic that is not ISP-bound, at the same rate. An ILEC that does not offer to exchange section 251(b)(5) traffic at these rates *must* exchange ISP-bound traffic at state-approved or state-negotiated reciprocal compensation rates. *ISP Remand Order*, ¶¶ 8, 89. The FCC's intent was not that ILECs, by refusing to exchange ISP-bound

traffic at the FCC's compensation rate – now $.0007 – would be entitled to exchange such traffic at *less than* that rate, or, as ILECs imply, at "bill and keep." Rather, the FCC intended that the ISP-bound rate would be *more than* the FCC's *capped* rates. In paragraph 89 of the *ISP Remand Order* the FCC stated, in relevant part:

> It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors, while permitting them to exchange traffic at state reciprocal rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed. Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to 'pick and choose' intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier...Thus, if the applicable rate cap is $.0010 [per minute of use], the ILEC must offer to exchange section 251(b)(5) traffic at that same rate. Similarly, if an ILEC wishes to continue to exchange ISP-bound traffic on a bill and keep basis in a state that has ordered bill and keep, it must offer to exchange all section 251(b)(5) traffic on a bill and keep basis. For those incumbent LECs that choose not to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts. This 'mirroring' rule ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.

Read in its entirety, three conclusions may be drawn from this paragraph: 1) the caps on compensation for ISP-bound traffic were intended to be *floors*, not ceilings, on the compensation due from ILECs in default of negotiations; 2) Horry, having contended in their pleadings and testimony that "no reciprocal compensation rate was negotiated," may not now contend that the rate for such traffic should be simply "bill and keep;" and 3) by having chosen not to offer to exchange section 251(b)(5) traffic at the FCC's capped rates, the ILECs must now exchange traffic at reciprocal compensation rates. Under the circumstances, MCI's proposal of $.0007 – which is *below that* of the approved

BellSouth reciprocal compensation rate in South Carolina of $.0012655 – is reasonable and should be accepted by the Commission. T. 108.

IV. JIP SHOULD NOT BE IMPOSED WHEN IT IS NOT REQUIRED BY LAW, IS NOT REQUIRED BY THE INDUSTRY, IS IMPRACTICABLE FOR CLECS AND WOULD SERVE AS A BARRIER FOR ENTRY (Calling Party Identification (CPN/JIP: Issues Nos. 1, 6 and 8)

This group of issues concerns the information that is exchanged between carriers for call set-up, routing, and rating of calls. Calling Party Number ("CPN") is an established signaling parameter that assists carriers in determining the locations of the user making the call. CPN is the industry standard for transmitting messaging for the jurisdictional origin of a call. "Back office" systems for billing, rating and auditing are designed based on CPN. CPN is also required under law. See 47 C.F.R. part 64. Accordingly, MCI's switches pass CPN to other carriers in accordance with industry standards and the law. T. 44, 50, 94.

The ILECs in these arbitrations have proposed that the parties be required to exchange the JIP as well as the CPN. JIP is a six-digit (NPA-NXX) field in the SS7 message. T. 42. The ILECs, however, concede that JIP is a signaling parameter new to the industry and that it is not a mandatory parameter. ("The NIIF [Network Interconnection Interoperability Forum] does not recommend proposing that the JIP parameter be mandatory.") The parties also agree that the Alliance for Telecommunications Industry Solutions ("ATIS") a voluntary forum, is still working on rules for carriers to implement JIP, particularly for VoIP and wireless traffic. Populating the JIP field, then, within the SS7 message is optional. T. 43, 90, 117.

Other carriers, particularly those within the region, including BellSouth, have not required JIP on a per-LATA basis. The interconnection agreements entered into between affiliates of the ILECs and BellSouth do not require such use of JIP. T. 43, 91, 93, 98. Moreover, the interconnection agreements of the affiliates of the ILECs in these arbitrations contain provisions that require NPA-NXX codes to be utilized in such a way so that local traffic can be distinguished from IntraLATA toll traffic, "regardless of the transport protocol method" used.[46] This is what MCI has agreed to do in this proceeding for non-ISP-bound traffic. As such, Horry's positions on these issues are inconsistent with standard industry practice and are unreasonable. T. 94.

CPN cannot be selectively manipulated or deleted en route. MCI will not misrepresent CPN. T. 47, 94. Except for ISP-bound calls, the CPN the parties receive with local/EAS calls should have addresses associated with them in the 911 databases. The ISPs served by MCI also will be easily identifiable; i.e., the calls are one-way, to MCI's ISP customers, and to a limited number of NPA-NXX codes. T. 94. Unlike Hargray's affiliate's service, TWCIS' service is intended as stationary, with numbers assigned only by the location of the end user. For another carrier to opt-into those parts of the interconnection agreement that discuss identification of the jurisdiction of the call, the carrier has to opt-into the entire agreement, which includes audit rights. Thus JIP is not only not required; it is unneeded in the present context.

A major reason for the development of JIP relates to the growth of the wireless industry. For example, if someone from New York uses a cell phone in a Florida hotel,

---

[46] See Hargray's affiliate's interconnection agreement at Attachment 3, section 6.2 and 3.2; Home's affiliate's interconnection agreement with BellSouth, attachment 3, section 8.1 and 5.2; and PBT's agreement with BellSouth, attachment 3, section 6.2. This language is what MCI has agreed to do in this proceeding for non-ISP traffic. See footnote 14, *supra*.

the cell phone number will indicate what carrier is being used to originate the call, and the extra six digits in JIP could indicate the physical cell site location that originated the call. In the wireless context, this additional information could determine the routing of the call, and facilitate access to toll-free calls, which sometimes are blocked at present. These concerns are not present with stationary, wireline service. Although the industry has been concerned about "phantom traffic," which is defined as calls that lack sufficient information to determine the jurisdiction (i.e., interstate or intrastate) of the traffic for billing purposes, this type of traffic is an open issue in the FCC's intercarrier compensation proceeding, and as such is another reason the Commission should not adopt the ILECs' proposal. T. 44-45, 94-98.

MCI's class 5 switches – i.e., those used for local service – are in Atlanta and Charlotte. T. 42. Each ILEC will be assigned to one or the other switch. This type of arrangement is not unusual for CLECs, which use a limited number of switches to cover multiple ILEC serving areas, and thus cross state and LATA boundaries. T. 42, 46, 90. Given this reality, some examples may serve to illustrate the difficulty in implementing the ILECs' proposal in these arbitrations: A call originated in Columbia, South Carolina would go to MCI's switch (either in Atlanta or Charlotte). Assume that the call is to be delivered to an end user in Columbia. The use of JIP would indicate this is a toll call from Atlanta/Charlotte. The call, however, should be rated and billed to the originating end user as a local call. T. 46. This situation is similar to the scenario ILECs describe, in that the JIP of the switch would not "accurately represent" the location of the caller. Using a different example, assume the originating end user is in Columbia, the switch is in Charlotte, and the terminating end user is in Charlotte. This call should be rated as a

toll call, but it will be characterized as local call based on the JIP to the terminating end user. T. 46. Thus it is evident that JIP is not a panacea for the jurisdictional rating of traffic.[47] See T. 47.

MCI will pass JIP, but it will be only the JIP of the MCI switch. This limited use of JIP cannot be used to accurately rate traffic. T. 45, 89, 91. MCI will not and cannot pass a unique JIP for every LATA served by its switch as the ILECs request. Further, a requirement that CLECs provide a unique JIP for every local calling area served by a CLEC switch would require the scope of the CLEC switch to be limited because separate partitions would have to be created for each JIP and separate "look-up" tables would have to be managed and created for each ILEC local calling area. This additional network management and administration would create significant additional equipment, software and administrative cost and would create network inefficiency. The economies of scale available to CLECs for switching would be drastically reduced. Moreover, a requirement that CLECs provide ILECs with a unique JIP for every local calling area served by the CLEC switch would cause CLECs to limit the calling area scope of their class 5 switches and to exit certain markets, thus undermining the FCC's recent *TRRO* decision[48] that CLECs are not impaired without access to ILEC unbundled switching. T. 48-50, 90-93, 116, 230.

Issue No. 6 concerns traffic that lacks CPN or JIP (as proposed by MCI) or that lacks CPN and JIP (as proposed by the ILECs in these arbitrations). MCI proposes that

---

[47] Thus if a call is generated from a wireline phone and terminates with a wireless phone, it is difficult to know in what location the call termination has occurred, because that JIP field has not yet been addressed. It is difficult for the terminating carrier to determine in what city the caller was located. This could affect, for example, the rates charged.

[48] See *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, FCC 04-290, (rel. February 4, 2005), ¶¶ 207, 209, 222-23.

unidentified traffic be treated as having the same jurisdictional ratio as the ratio of the identified traffic. The ILECs agree with this premise, *except* that if the unidentified traffic exceeds 10% of the total traffic, then the ILECs demand that *all* the unidentified traffic shall be billed at the ILECs' access charge rates. The ILECs' proposal is unfair and unnecessary. Concerns over fraud should be dealt with by the parties through audit provisions and cooperative efforts pursuant to language to which they have already agreed. T. 52, 99-100.

Issue No. 8 raises the question whether the parties always must pass the signaling parameters that are the subject of this dispute (CPN and/or JIP) to the other interconnecting carrier, or whether these parameters will be passed along as they are received. MCI's language is to be preferred, because no party can guarantee that CPN will exist on all calls. MCI, no differently than other carriers, will have as much control over traffic to and from TWCIS as the ILECs themselves have over traffic to and from their customers. T. 52, 53. For these reasons MCI's language for this group of issues should be adopted by the Commission. T. 100-01.

CONCLUSION

Horry's proposed contract language, if acceded to by the Commission, would significantly delay the advent of competitive services to independent ILEC service areas in South Carolina. The Commission should not allow itself to be misled by Horry's arguments, which are contrary to the technology-neutral, pro-competitive intent of the Act, and, indeed, turn the Act on its head. Horry has no intention of negotiating meaningful interconnection with any carrier associated with the cable industry. Should

Horry and its incumbent brethren succeed in frustrating entry by MCI into their traditional franchises, the clear message will be conveyed that independent ILEC service territories in South Carolina are not open to significant competition, and the consumers in those areas do not enjoy the same choice as consumers who live and work elsewhere. Accordingly, MCI urges the Commission to approve its language, direct the parties to implement the same expeditiously, and approve the parties' interconnection agreement.

Respectfully submitted this 23d day of November, 2005.

By: _____

Edward M. Woodward, Jr.
Darra W. Cothran
Woodward, Cothran & Herndon
Post Office Box 12399
Columbia, S.C. 29211
Phone (803) 799-9772
Fax (803) 799-3256

Kennard B. Woods
Friend, Hudak & Harris, LLP
3 Ravinia Drive, Suite 1450
Atlanta, GA 30346
Phone (770) 399-9500
Fax (770) 395-0000

BEFORE THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

In Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Horry Telephone Company, Concerning Interconnection and Resale under the Telecommunications Act of 1996	)	Docket No. 2005-188-C

CERTIFICATE OF SERVICE

I, Betty J. DeHart of Woodward, Cothran & Herndon, Attorneys for MCI, Inc., do hereby certify that I have served a copy of the Post-Hearing Brief of MCI by causing to be deposited in a United States Postal Service mailbox copies of the same, postage prepaid, addressed to the persons indicated below.

Joseph Melchers, Esquire
The Public Service Commission
State of South Carolina
Post Office Drawer 11649
Columbia, S.C. 29211

Margaret M. Fox, Esquire
John M. Bowen, Jr., Esquire
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, S.C. 29211

Florence P. Belser, Esquire
South Carolina Public Service Commission
Office of Regulatory Staff
1441 Main Street, Suite 300
Columbia, S.C. 29201

Shannon Bowyer Hudson, Esquire
South Carolina Public Service Commission
Office of Regulatory Staff
1441 Main Street, Suite 300
Columbia, S.C. 29201

Frank R. Ellerbe, III, Esquire
Robinson, McFadden & Moore, P.C.
Post Office Box 944
Columbia, S. C. 29202

Betty J. DeHart

SWORN to before me this

23 day of November, 2005.

Gloria Todd (L.S.)

Notary Public for South Carolina
My Commission Expires: 07/25/15